

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT LEE CHILDRESS,

Petitioner,

v.

Case Number: 10-cv-11998
Honorable Denise Page Hood

RAYMOND BOOKER,

Respondent.

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ORDER DISMISSING CASE

On May 18, 2010, Petitioner Robert Lee Childress, a state prisoner currently confined at the Ryan Correctional Facility in Detroit, Michigan, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his Wayne County Circuit Court guilty-plea convictions for non-sufficient funds in violation of Mich. Comp. Laws § 750.131, and for using false pretenses in violation of Mich. Comp. Laws § 750.218(4)(a), for which he was fined \$500.00. In the instant action, Petitioner raises claims of actual innocence, illegal seizure, due process and equal protection violations, ineffective assistance of counsel, and prosecutorial and police misconduct.

Upon initial screening of the case, this Court discovered that, on December 24, 2009, Petitioner also filed a habeas action, case number 09-cv-15004, which was assigned to a different judge. *Childless v. Booker*, Case No. 09-cv-15004 (O'Meara, J.). However, because Petitioner was not "in custody" under the conviction or sentence he was challenging, that Court summarily dismissed the petition. *See Childress*, Case No. 09-cv-15004. (Dkt. # 5.)

Accordingly, the instant action must be dismissed as duplicative. A suit is duplicative

and subject to dismissal if the claims, parties, and available relief do not significantly differ between the two actions. *See, e.g., Barapind v. Reno*, 72 F.Supp.2d 1132, 1145 (E.D. Cal. 1999) (internal citations omitted). Here, Petitioner's habeas petition challenges the same conviction, raises the same claims, and seeks the same relief as his previously-filed petition. Consequently, the present petition is subject to dismissal as a duplicate petition. *See, e.g., Flowers v. Trombley*, No. 06-10726, 2006 WL 724594 (E.D. Mich. Mar. 17, 2006); *Harrington v. Stegall*, No. 02-70573, 2002 WL 373113 (E.D. Mich. Feb.28, 2002); *see also Davis v. United States Parole Comm'n*, 870 F.2d 657, 1989 WL 25837, at *1 (6th Cir. Mar.7, 1989) (stating that a district court may dismiss a habeas petition as duplicative of a pending habeas petition when the second petition is essentially the same as the first petition).

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus is **DISMISSED AS DUPLICATIVE**.

IT IS FURTHER ORDERED that Petitioner's "Motion for Equitable Tolling" [dkt. # 3] and "Motion to Challenge Expired Sentence" [dkt. # 4] are **DENIED** as moot.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: May 27, 2010

I hereby certify that a copy of the foregoing document was served upon Robert Childress, Reg. No. 365065, Ryan Correctional Facility, 17600 Ryan Road, Detroit, MI 482312 on May 27, 2010, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager